THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 14252 OF 1997

Date: 08.02.2007

Between:

Executive Engineer (R&B) Division, Narasaraopet, Guntur District.

... Petitioner.

And

Yerapala John and another.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 14252 OF 1997

ORDER:

Aggrieved by the award of the labour Court, Guntur in I.D. No. 466 of 1991 dated 30.03.1997 the Executive Engineer R&b) Division, Narasaraopet, Guntur District is before this Court.

On an application filed under Section 2-A(2) of the Industrial Disputes Act by the first respondent herein, the labour Court directed his reinstatement with continuity of service but without back wages. Before the Tribunal, the workmen examined himself as WW-1 and marked Ex.W-1 a copy of the appointment proceedings dated 03.05.1978. On behalf of the petitioner herein MW-1 was examined as a witness. The Tribunal referred to Ex.W-1 document dated 03.05.1978 to hold that the first respondent was appointed as a jeep driver for a period of two months and that his services were continued thereafter. The Tribunal noted the evidence of WW-1 that he continuously worked for more than 330 days including the period he worked at Piduguralla Sub-division as he was sent there by the Executive Engineer. The labour Court noted the admission of MW-1 that the first respondent was continued in service even after the two months initial period of appointment, since they could not appoint any candidate as sponsored by the employment exchange.

In the counter before the Tribunal, the petitioner herein stated that the first respondent was taken into service as a jeep driver on 01.05.1978 for a period of two months and, as the process of appointment of a regular candidate as a jeep driver was not completed, the petitioner herein was compelled to extend his services from time to time till 18.02.1979 and that the order of appointment or extension of service from time to time was purely temporary and this fact was known to the respondent-workmen. In his evidence before the Tribunal, M.W-1 stated that the petitioner was appointed temporarily as a jeep driver on 03.05.1978 for a period of two months. He was taken temporarily till a regular candidate was appointed after being sponsored by the employment exchange. As the regular candidate was not appointed, the petitioner was again taken as a driver temporarily from 02.05.1978 to 31.08.1978. He did not attend duty for 87 days and again worked from 15.01.1979 to 18.02.1979 and then they could employ a candidate sponsored by the employment exchange on a regular basis. According to MW-1 the first respondent worked for 202 days and he did not continuously work for 240 days. M.W-1 further deposed that till the I.D. was filed, there was no representation from the respondent workman for a period in excess of 12 years. The Tribunal rejected the evidence of M.W-1 holding that he did not have any

personal knowledge about the work of the respondent-workman and, on the other hand, the evidence of WW-1 was that he continuously worked for more than 330 days including the period that he worked at Piduguralla sub-division. Taking note of the admission of M.W-1 that the respondent-workman had worked continuously even after the two months initial period of appointment and, since the first respondent had deposed that he worked upto 03.04.1979 continuously, the labour Court held that, since the relevant records were not produced by the petitioner herein to show that the first respondent did not work at Piduguralla sub-division for the period from 19.10.1978 to 14.01.1979, the first respondent was entitled for protection under Section 25-F of the Industrial Disputes Act. On the ground that the first respondent did not seek reinstatement for a period of about 13 years, and the abnormal delay in filing the I.D. was not explained, the labour Court held that the first respondent was not entitled for payment of back wages.

It is well settled by a catena of judgments of the Supreme Court, in **Manager, Reserve Bank of India, Bangalore Vs. S. Mani**[1]; **Batala Coop. Sugar Mills Ltd Vs. Sowaran Singh**[2]; **Surendranagar District Panchayat Vs. Dahyabhai Amarsinh**[3]; **Chief Engineer (construction) Vs. Keshava Rao**

(dead) by Lrs[4]; **Range Forest Officer Vs. S.T. Hadimini**[5], that the burden to establish that he worked for a period of 240 days is on the workman and it is only if this initial burden is discharged would the burden shift to the employer. In the present case, M.W-1 deposed before the labour Court that the first respondent had worked only for 202 days and the period during which he had worked was referred to. In his oral evidence the workman stated that he had worked for 330 days. Except for the self-serving oral evidence of the first respondent, there is no evidence on record to establish that he had put in the minimum required 240 days of service in the twelve month period preceding his termination. The labour Court erred in placing the burden on the petitioners herein and in finding fault for their inability to produce the records to show whether or not the respondent-workman had worked in Piduguralla sub-division for the period from 19.10.1978 to 14.01.1979. When it is the specific case of the petitioner herein that the first respondent did not work for this period of 87 days the question of their being called upon to produce records to show that he did not work does not arise. The very fact that the first respondent admittedly did not raise any dispute for twelve long years after his alleged termination would necessitate an inference being drawn against him. The award of the labour Court, in I.D. No. 466 of 1991

dated 30.03.1997, is quashed.

The writ petition is allowed. No costs.

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Date: 08.02.2007 RAMESH RANGANATHAN, J

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[1] (2005) 5 SCC 100
[2] (2005) 8 SCC 481
[3] (2005) 8 SCC 750
[4] (2005) 11 SCC 229
[5] (2002) 3 SCC 25